

## REMARKS

This paper is submitted with a request and the fee for a one-month extension of time. Consequently, this is a full and timely response to the non-final Office Action sent electronically by the U.S. Patent and Trademark Office on July 24, 2008. Claim 11 has been amended. Claims 42-45 are new. Claims 1-10, 13-20, 24, 25 and 27-38 are canceled. Claims 11, 12, 21-23, 26 and 39-45 are pending in the present application. The subject matter of amended claim 11 and new claims 42-45 is illustrated in FIGs. 2A-2D, 3 and 4 and presented in the related detailed description of Applicants' original specification. Therefore, no new matter is introduced.

In view of the foregoing amendments and following remarks, reconsideration and allowance of the present application and claims are respectfully requested.

### Response to Claim Rejections under 35 U.S.C. §103 – Claims 11, 12, 21-23, 26 and 39-41

#### A. Statement of the Rejection

Claims 11, 12, 21-23, 26 and 39-41 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent Application Publication 20020004246 to Daniels et al. (hereinafter *Daniels*) in view of U.S. Patent No. 6,217,744 to Crosby (hereinafter *Crosby*) further in view of U.S. Patent No. 5,371,687 to Holmes II, et al. (hereinafter *Holmes*).

#### B. Discussion of the Rejection

For a claim to be properly rejected under 35 U.S.C. § 103, the Examiner should set forth in the Office action: the relevant teachings of the prior art relied upon, the difference or differences in the claim over the applied reference(s), the proposed modification necessary to arrive at the claimed subject matter and an explanation as to why the claimed invention would have been obvious to one of ordinary skill in the art at the time the invention was made. It is well settled law that a *prima facie* case of obviousness must teach or suggest all the claimed limitations.

Regarding the requirement to teach or suggest all the claim limitations, MPEP § 2143.03 states "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d

981, 180 USPQ 580 (CCPA 1974). ‘All words in a claim must be considered in judging the patentability of that claim against the prior art.’ *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Applicants’ independent claim 11, as amended, includes at least one feature that is not disclosed, taught or suggested by the proposed combination of *Daniels*, *Crosby* and *Holmes*. Specifically, the proposed combination fails to disclose, teach or suggest at least “an optical system positioned in a light path between the light source and at least one of the first and second photodetectors, the optical system arranged to modify incident light from one of the control area and the target area.”

*Daniels* discloses immunochromatographic test strip assays which employ semiconductor nanocrystals as detectable labels and methods for detecting and quantifying one or more analytes of interest in a test sample using the assays. *Daniels* is entirely silent regarding the claimed optical system positioned in a light path between the light source and at least one of the first and second photodetectors, the optical system arranged to modify incident light from one of the control area and the target area.

*Crosby* is cited for its alleged disclosure of features other than the claimed optical system. In addition, *Crosby* does not remedy the failure of *Daniels* to disclose, teach or suggest each feature of Applicants’ claimed test system.

*Holmes* is cited for its alleged disclosure of features other than the claimed optical system. Furthermore, *Holmes* does not remedy the failure of *Daniels* and *Crosby* to disclose, teach or suggest each feature of Applicants’ claimed test system.

Together, the proposed combination does not disclose, teach or suggest the claimed “optical system positioned in a light path between the light source and at least one of the first and second photodetectors, the optical system arranged to modify incident light from one of the control area and the target area.” For at least this reason, the proposed combination fails to establish a *prima facie* case of obviousness with respect to Applicants’ claim 11. Accordingly, favorable reconsideration and

withdrawal of the rejection of independent claim 11 under 35 U.S.C. §103(a) are respectfully requested.

Because independent claim 11 is allowable, dependent claims 12, 21-23, 26 and 39-41, which depend directly or indirectly from allowable independent claim 11, are allowable. *In re Fine, supra*. Accordingly, favorable reconsideration and withdrawal of the rejection of dependent claims 12, 21-23, 26 and 39-41 under 35 U.S.C. §103(a) are respectfully requested.

#### **New Claims 42-45**

Because independent claim 11 is allowable, dependent claims 42-45, which depend directly or indirectly from allowable independent claim 11, are also allowable. *In re Fine, supra*.

#### **CONCLUSION**

Applicants respectfully submit that pending claims 11, 12, 21-23, 26 and 39-45 are allowable and that the present application is in condition for allowance. Accordingly, a Notice of Allowance is respectfully solicited. Should the Examiner have any comments regarding the Applicants' response, Applicants request that the Examiner telephone Applicants' undersigned attorney.

Respectfully submitted,

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